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§ 563b.1 Scope of part.

(a) *General.* Except as the Office may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual savings associations to capital stock associations, and no mutual savings association shall convert to the capital stock form without the prior written consent of the Office. The Office may grant a waiver in writing from any requirement of this part for good cause shown.

(b) *Provisions of prescribed forms.* Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part except as it relates to information not deemed material.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file a

written request for waiver of compliance with such provision by the Office. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders or other savings associations or be contrary to the public interest.

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) *Acting in concert.* The term “acting in concert” shall be defined as provided in § 574.2(c).

(2) *Affiliate.* An “affiliate” of, or a person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) *Amount.* The term “amount”, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(4) *Applicant.* An “applicant” is a savings association which has applied to convert pursuant to this part.

(5) *Associate.* The term “associate”, when used to indicate a relationship with any person, means:

(i) Any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities,

(ii) Any trust or other estate in which such person has a substantial

beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that, for the purposes of § 563b.3 (c)(6), (c)(7), (c)(9), and (d)(4), it does not include any tax-qualified employee stock benefit plan or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of § 563b.3(c)(8), it does not include any tax-qualified employee stock benefit plan, and

(iii) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or subsidiaries.

(6) *Association members.* The term “association members” refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant’s meeting at which conversion will be voted upon.

(7) *BIF.* The term “BIF” means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(8) *Broker.* The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others.

(9) *Capital stock.* The term “capital stock” includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(10) *Charter.* The term “charter” includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(11) *Control.* The term “control” (including the terms “controlling”, “controlled by”, and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(12) *Dealer.* The term “dealer” means any person who engages either for all

or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) *Director.* The term “director” means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(14) *Eligibility record date.* The term “eligibility record date” means the record date for determining eligible account holders of a converting association.

(15) *Eligible account holder.* The term *eligible account holder* means any person holding a qualifying deposit as determined in accordance with § 563b.3(e) of this part, but shall include only those account holders with savings accounts in place for a minimum of one year prior to board of director adoption of the plan of conversion.

(16) *Employee.* The term *employee* does not include a director or officer.

(17) *Equity security.* The term “equity security” means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

(18) *FDIC.* The term “FDIC” means the Federal Deposit Insurance Corporation, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(19) *Local community.* The term *local community* includes all counties in which the converting association has its home office or a branch office, all zip code areas corresponding to the converting association’s delineated Community Reinvestment Act service area, each county’s metropolitan statistical area and/or such other area or category as delineated by the savings association and provided for in the plan of conversion, as approved by the OTS.

(20) *Market Maker.* The term “market maker” means a dealer who, with respect to a particular security:

(i) Regularly publishes *bona fide*, competitive bid and offer quotations in

a recognized inter-dealer quotation system; or

(ii) Furnishes *bona fide* competitive bid and offer quotations on request; and

(iii) Is ready, willing and able to effect transactions in reasonable quantities at his or her quoted prices with other brokers or dealers.

(21) *Material*. The term “material”, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent association member ought reasonably to be informed in voting upon the plan of conversion of the applicant.

(22) *Member*. The term “member” means any person qualifying as a member of a savings association pursuant to its charter or bylaws.

(23) *Offer*. The term “offer”, “offer to sell”, or “offer of sale” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(24) *Office*. The term “Office” means the Office of Thrift Supervision.

(25) *Officer*. The term “officer” means the chairman of the board, president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(26) *Person*. The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(27) *Proxy*. The term “proxy” includes every form of authorization by which a person is, or may be deemed to be, designated to act for an association member in the exercise of his or her voting rights in the affairs of a savings asso-

ciation. Such an authorization may take the form of failure to dissent or object.

(28) *Purchase*. The terms “purchase” and “buy” include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(29) *Regional Director*. The term *regional director* means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with examination and supervision of savings associations in the region in which the converting savings association has its principal office.

(30) *SAIF*. The term “SAIF” means the Savings Association Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(31) *Sale*. The terms “sale” and “sell” include every contract to sell or otherwise dispose of a security or interest in a security for value; but such terms do not include an exchange of securities in connection with a merger or acquisition approved by the Office.

(32) *Savings account*. The term “savings account” has the same meaning as in part 561 of this chapter and includes certificates of deposit.

(33) *Savings association*. The term “savings association” has the same meaning as in part 561 of this chapter.

(34) *Security*. The term “security” includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting trust certificate, or in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(35) *Solicitation; solicit*. The terms “solicitation” and “solicit” refer to:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) Any request to execute, not execute, or revoke a proxy; or

(iii) The furnishing of a form of proxy or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5(f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(36) *Subscription offering.* The term “subscription offering” refers to the offering of shares of capital stock, through nontransferable subscription rights issued to:

- (i) Eligible account holders as required by § 563b.3(c)(2);
- (ii) Supplemental eligible account holders as required by § 563b.3(c)(4);
- (iii) Members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c)(5);
- (iv) Directors, officers and employees, as permitted by § 563b.3(d)(2); and
- (v) Eligible account holders, supplemental eligible account holders, and voting members as permitted by § 563b.3(d)(3).

(37) *Subsidiary.* A “subsidiary” of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(38) *Supplemental eligibility record date.* The term “supplemental eligibility record date” means the supplemental record date for determining supplemental eligible account holders of a converting association required by § 563b.3(c)(4). The date shall be the last day of the calendar quarter preceding the Office’s approval of the application for conversion.

(39) *Supplemental eligible account holder.* The term “supplemental eligible account holder” means any person holding a qualifying deposit, except officers, directors and their associates, as of the supplemental eligibility record date.

(40) *Tax-qualified employee stock benefit plan.* A “tax-qualified employee stock benefit plan” is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust, meets the requirements to be “qualified” under section 401 of the Internal Revenue Code. A “non-tax-qualified employee stock benefit plan”

is any defined benefit plan or defined contribution plan which is not so qualified.

(41) *Underwriter.* The term “underwriter” means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers commission. The term “principal underwriter” means an underwriter in privity of contract with the applicant or other issuer of securities as to which he or she is the underwriter.

(b) Terms defined in other parts of this chapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22732, May 3, 1994; 59 FR 61261, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995]

Subpart A—Standard Conversions

§ 563b.3 General principles for conversions.

(a) *Applicability of subpart.* The provisions of this subpart shall govern conversions undertaken pursuant to any other subpart of this part unless clearly inapplicable.

(b) *General requirements.* No application for conversion shall be approved by the Office if:

(1) The plan of conversion adopted by the applicant’s board of directors is not in accordance with the provisions of this part;

(2) The conversion would cause the applicant to fail to meet any regulatory capital requirement of § 567.2 of this chapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended; or